IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2196 OF 2004

IN

SUIT NO.2152 OF 2004

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Ultra Distributors Pvt.Ltd. ...Plaintiff

v/s.

Laser Video & ors. ...Defendants

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Mr.A.Y. Sakhare i/b Mr.A.M. Sarogi for the Plaintiff.

Mr.R. Narula i/b J. Narula & Associates for the Defendants Nos. 1 & 3.

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**CORAM: D.K.DESHMUKH, J.**

**DATED:** 31ST MARCH,2005

**P.C.:**

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit seeking a permanent injunction against the Defendants in relation to certain aspect of copy right in movie and TV programme. In effect the Plaintiff is seeking specific performance of the agreement dated 5th September, 2000 between the Plaintiff and the Defendant No.1. As per the terms of this agreement, Rs.3 lakh were to be paid on signing of agreement. Rs.5 lakh were to be paid by the Plaintiff to the Defendant No.1 on the Defendant No.1 delivering entire material mentioned in clause 9 of the agreement and Rs.3 lakh were to be paid after issuing public advertisement by the Plaintiff and in case no claims are received from anybody pursuant to the public advertisement.

2. Thus, before issuance of public advertisement

Rs.8 lakh were to be paid. According to the Plaintiff, the Plaintiff has paid Rs.5 lakh. Though the learned Counsel for the Plaintiff submitted that the Plaintiff has not received the entire material mentioned in clause 9, he has not been able to show any document where the grievance is made by the Plaintiff that the Defendant No.1 has not delivered entire material mentioned in clause (9) and therefore the Plaintiff has not made payment of the balance amount. The case of the Plaintiff appears to be that because an objection was raised by the Defendant No.2 pursuant to the public advertisement made by the Plaintiff, the Plaintiff did not make the payment. The Plaintiff, therefore, has first to satisfy the Court either that he has paid the amount of Rs.8 lakh or that he made grievance with the Defendant No.1 that because he did not deliver the entire material mentioned in clause (9), he is not making the full payment. No such material is placed on record. It is, therefore, obvious that though the Plaintiff is claiming virtually specific performance of the agreement at Exh.A, the Plaintiff himself appears not have abided by his obligation under the agreement. Obviously , therefore, the Plaintiff is not entitled to claim specific performance of the agreement.

Thus, it cannot be said that the Plaintiff has a prima facie case in his favour and therefore, there is no question of granting any interim relief in favour of the Plaintiff. Notice of Motion disposed of.

3. At this stage, a request is made for continuation of the ad-interim order which is for maintenance of status-quo.

4. As I found that the Plaintiff has not made out any prima facie case, in my opinion, it will not be appropriate to continue operation of any ad-interim order. Request is, therefore, rejected.

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